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THE SENATE



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July 28, 1998

EX PARTE OR LATE FILED

Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

To whom it may concern:

I recently introduced Senate Bill 1233 (attached) which amends the Michigan Antitrust Reform Act to remove the existing exemption for telecommunications providers. I am sending you this letter to inform you of the bill's intent and to ask for any input on this issue. Before session begins this fall, I wanted to make sure you are given the opportunity to review the bill.

As you know, the Michigan Telecommunications Act (MTA) was substantially amended in 1995 as a vehicle for moving from a regulated public utility monopoly structure to a competitive multiple provider market. When Michigan adopted the revised MTA it included a "purpose clause" setting forth the Legislature's purpose in enacting the law including the following:

(1) *This act shall be known and may be cited as the "Michigan telecommunications act."*

(2) *The purpose of this act is to do all of the following:*

(b) *Allow and encourage competition to determine the availability, prices, terms and other conditions of providing telecommunications services.*

(c) *Restructure regulation to focus on price and quality of services and not on the provider. Rely more on existing state and federal law regarding antitrust, consumer protection, and fair trade to provide safeguards for competition and consumers.*

MCL 484.2101 (emphasis added)

Previously, in 1984, the Michigan Legislature had adopted the Michigan Antitrust Reform Act (MARA) based largely on the Uniform State Antitrust Act (USAA) promulgated by

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the National Conference of Commissioners of Uniform State Laws and approved by the American Bar Association.

The Prefatory Note to the USAA indicated "there are . . . important areas of trade and commerce in which state antitrust enforcement can be the only remedy." The MARA borrows the general language of Sections 1 and 2 of the federal Sherman Act and makes available to state authorities the tools to oppose acts and arrangements in unreasonable restraint of trade which are purely intrastate or which are, as a practical matter, not accountable to federal authorities because of limitation on budget and personnel.

When the MARA was adopted, Michigan had a system of regulated monopoly telephone companies. Under the regulated public utility system, a lawful monopoly was created but was subject to extensive regulations and government approval of rates of return, rates for service and levels of service.

This structure has now changed under the MTA and local telephone companies are no longer under government control for rates of return, prices or levels of service. Under the Legislature's direction, the MTA abandoned the system of public utility regulation and limited the Michigan Public Service Commission regulations only to those necessary for the transition from a monopoly system to a competitive market.

In enacting the MTA, the Legislature left in place the following provision that continues the exemption for the now-unregulated monopoly telephone companies from scrutiny under the state antitrust laws:

A transaction or conduct made unlawful by this act [Michigan Antitrust Reform Act] shall not be construed to violate this act where it is the subject of a legislatively mandated pervasive regulatory scheme ... which confers exclusive jurisdiction on a regulatory board or officer to authorize, prohibit or regulate the transaction or conduct.

MCL 445.774(5)

The Michigan Legislature failed to recognize that Michigan's Antitrust Reform Act created immunity from antitrust for a company subject to a "legislatively mandated pervasive regulatory scheme." While the MTA removed traditional regulated monopoly price and service controls, the telecommunications industry in Michigan is still subject to the MTA's pervasive regulatory scheme. SB 1233 amends the MARA to remove the exemption for telecommunications providers.

This is a complex subject and I and other members of the Legislature would appreciate receiving comments and analyses from your organization regarding the application of state antitrust laws to the emerging competitive telecommunications industry. In particular, I would like examples of specific anticompetitive behavior that would be prohibited by SB 1233.

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Please share a copy of any material you provide me to Senator Bill Schuette, Chairman of the Senate Economic Development, International Trade and Regulatory Affairs Committee, which is considering SB 1233.

Please contact me or Angel Sorrells of my office staff if you have any questions.

Sincerely,


Wm. Van Regenmorter
State Senator

cc: Senator Bill Schuette
Encl.

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Trade; antitrust; exemption for telecommunications providers;
eliminate.

TRADE: Antitrust; COMMUNICATIONS: Telecommunications

A bill to amend 1984 PA 274, entitled
"Michigan antitrust reform act,"
by amending sections 1 and 4 (MCL 445.771 and 445.774).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Person" means an individual, corporation, business
3 trust, partnership, association, or any other legal entity.

4 (b) "Relevant market" means the geographical area of actual
5 or potential competition in a line of trade or commerce, all or
6 any part of which is within this state.

7 (C) "TELECOMMUNICATIONS PROVIDER" MEANS A TELECOMMUNICATIONS
8 PROVIDER AS DEFINED BY SECTION 102(CC) OF THE MICHIGAN TELECOM-
9 MUNICATIONS ACT, 1991 PA 179, MCL 484.2102.

10 (D) ~~(e)~~ "Trade or commerce" means the conduct of a
11 business for profit or not for profit producing or providing

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1 goods, commodities, property, or services and includes, without
2 limitation, advertising, franchising, solicitation, offering for
3 sale, lease, or distribution of a service or property, tangible
4 or intangible, real, personal or mixed, or any other article of
5 commerce.

6 (E) ~~(d)~~ "Unit of government" means this state or an
7 agency, instrumentality, political subdivision, or public corpo-
8 ration of this state, including, but not limited to, municipal
9 corporations, quasi-municipal corporations, and authorities —
10 and including their officials, employees, and agents when acting
11 in their official capacity.

12 Sec. 4. (1) Labor of a human being is not a commodity or an
13 article of commerce.

14 (2) This act shall not be construed to forbid the existence
15 and operation of any labor, agricultural, or horticultural organ-
16 ization instituted for the purpose of mutual help, while lawfully
17 carrying out its legitimate objects.

18 (3) This act shall not be construed to prohibit, invalidate,
19 or make unlawful any act or conduct of any unit of government,
20 when the unit of government is acting in a subject matter area in
21 which it is authorized by law to act, except for purposes of con-
22 ducting an investigation and the obtaining of appropriate injunc-
23 tive or other equitable relief, other than civil penalties,
24 ~~pursuant to~~ UNDER section 7.

25 (4) This act shall not apply to a transaction or conduct
26 specifically authorized under the laws of this state or the
27 United States, or specifically authorized under laws, rules,

1 regulations, or orders administered, promulgated, or issued by a
2 regulatory agency, board, or officer acting under statutory
3 authority of this state or the United States.

4 (5) A transaction or conduct ~~made unlawful~~ PROHIBITED by
5 this act ~~shall not be construed to violate~~ IS NOT A VIOLATION
6 OF this act ~~where~~ IF it is the subject of a legislatively man-
7 dated pervasive regulatory scheme, including, but not limited to,
8 the insurance code of 1956, ~~being sections 500.100 to 500.8302~~
9 ~~of the Michigan Compiled Laws~~ 1956 PA 218, MCL 500.100 TO
10 500.8302, which confers exclusive jurisdiction on a regulatory
11 board or officer to authorize, prohibit or regulate the transac-
12 tion or conduct. THIS SUBSECTION DOES NOT APPLY TO A TRANSACTION
13 OR CONDUCT BY A TELECOMMUNICATIONS PROVIDER.

14 (6) This act shall not apply to a transaction or conduct of
15 an authorized health maintenance corporation, health insurer,
16 medical care corporation, or health service corporation or health
17 care corporation when the transaction or conduct is to reduce the
18 cost of health care and is permitted by the commissioner. This
19 subsection ~~shall~~ DOES not affect the enforcement of the federal
20 antitrust act by federal courts or federal agencies.

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